

CERTIFICATE OF EXPRESS MAILING

I hereby certify that this paper (along with any paper referred to as being attached or enclosed) is being deposited with the United States Postal Service on the date shown below with sufficient postage as Express mail in an envelope addressed to:
MS: Issue Fee, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450. EV482066435US

Date: 7-SEP-04 | Name: M. VASQUEZ | Signature: M. Vasquez

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In the Application of: Edward L. Carver)
on: Apparatus for Making a Plurality of) Group Art Unit: 1743
Reagent Mixtures and Analyzing Particle)
Distributions of the Reagent Mixtures)
Serial No.: 09/039,789) Examiner: A. Soderquist
Filed On: March 16, 1998) (Docket No. 116310.0030)

MS: Issue Fee
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313

TRANSMITTAL LETTER

Dear Sir:

In response to the Notice of Allowance dated June 7, 2004, Applicant submits herewith the following papers:

1. Applicant's Comments on Statement of Reasons for Allowance;
2. Issue Fee Transmittal; and
3. Return Receipt Postcard.

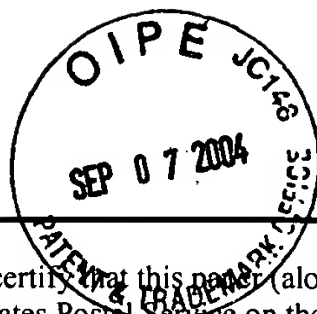
Authorization is hereby given to charge the \$665.00 Issue Fee for Small Entity to Deposit Account No. 50-1402. If any additional fee is required, please accept this as authorization to charge Deposit Account No. 50-1402.

Respectfully submitted,

Date: 7 September 2004

By:

Mark D. Giarratana
Mark D. Giarratana
Attorney for Applicant
Registration No. 32,615
McCarter & English, LLP
CityPlace I
185 Asylum Street
Hartford, Connecticut 06103
Phone: (860) 275-6719
Fax: (860) 560-5919



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APPLICANT'S COMMENTS ON STATEMENT OF REASONS FOR ALLOWANCE

Dear Sir:

In response to the Examiner's statement of reasons for allowance contained in the Notice of Allowance mailed on June 7, 2004, please enter the following Comments. In accordance with MPEP 1302.14, these comments are submitted with the Issue Fee Transmittal.

Applicant disagrees with the statement of reasons for allowance to the extent that it attempts to improperly construe the claims other than in accordance with the plain and ordinary meanings of the words used, or to the extent that it attempts to improperly read into the claims limitations from the detailed description portion of the specification that do not appear in the claims. More specifically, Applicant disagrees with the Examiner's statement that "when a single reagent container and/or a single lysing agent is used the practice of the claims must allow

the advantage found on page 25, line 17 to page 26, line 5 of the instant specification to be obtained.” As made clear in Appellant’s Appeal Brief, the independent claims are not properly interpreted to mean that a single lysing agent be used to lyse the blood of all animal species, but rather, the original specification teaches, and the applicable claims recite, that one lysing agent can be used to lyse the blood of plural species. Although the disclosed embodiment of the invention in the original specification is capable of achieving the advantage quoted by the Examiner, not all apparatus and methods covered by the claims (including such apparatus and methods that employ a single reagent container and/or a single lysing agent) are required to perform or allow all aspects of the quoted advantage. Note, for example, that the quoted portion of the specification states that the processing and control unit “can” contain the indicated information, but does not state that it “must” contain the indicated information. This is consistent with the applicable teachings of the specification and proper claim interpretation as summarized in the Appeal Brief. The quoted advantage is not a limitation of the claims, and any attempt to read any such limitation into a claim not reciting such limitation is improper.

No fee is believed to be associated with this submission. If any fee is required, or otherwise if necessary to cover any deficiency in fees already paid, authorization is hereby given to charge out Deposit Account No. 50-1402.

Respectfully submitted,

By 

Mark D. Giarratana
Attorney for Applicant
Registration No. 32,615
McCarter & English, LLP
CityPlace I
185 Asylum Street
Hartford, Connecticut 06103
Phone: (860) 275-6719
Fax: (860) 560-5919

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